

AMENDED IN SENATE MAY 1, 2013
AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 377

Introduced by Senator Lieu

February 20, 2013

An act to amend Sections 1726, 1741, 1771.2, and 1773.5 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 377, as amended, Lieu. Public works: project determinations: wage and penalty assessments.

Existing law defines the term “public works” for purposes of requirements regarding the payment of prevailing wages, the regulation of working hours, and the securing of workers’ compensation for public works projects. Under existing law, the body awarding the contract for a public work is required to report any suspected violations of requirements relating to public works projects to the Labor Commissioner.

~~Under the bill, an awarding body, that does not believe~~

This bill would require a political subdivision that believes a project in which it has a legal interest is interested, as specified, is not a public work, is required to provide notice, as specified, to the Director of Industrial Relations, the Labor Commissioner, and any other person who requests that notice.

Existing law authorizes the Director of Industrial Relations to establish rules and regulations for the purpose of carrying out public works requirements, including, but not limited to, the responsibilities and duties of awarding bodies relating to public works projects.

This bill would ~~authorize any party to request from~~ *require* the director ~~a determination of~~ *to determine, within 60 days of receipt of a request for a determination, except as specified,* whether a project is a public work, and would ~~require the director to make that determination within 60 days of the receipt of that request, except as specified~~ *work*. This bill would ~~authorize a party to make~~ *require* an administrative appeal of that determination *to be made* within 30 days of the date of the determination, and would require the director to issue a determination on an appeal within 30 days after the receipt of the appeal, except as specified. This bill would grant to the director quasi-legislative authority to determine coverage of projects under prevailing wage requirements, and provide that a final determination on any appeal is subject to judicial review.

Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if, after an investigation, the commissioner determines there has been a violation of the laws regulating public works projects, including the payment of prevailing wages. The assessment is required to be served within 180 days, with exceptions, after the filing of a valid notice of completion in the county where the public work was performed, as specified. *Under existing law, each contractor and subcontractor is required to keep accurate payroll records, as prescribed, that are certified and available for inspection, as specified.*

This bill would require the assessment to be served within 180 days of the date of the determination of the violation. This bill would toll the period for service of assessments for the period of time required by the Director of Industrial Relations to make a determination of whether the project is a public work, as specified. *The bill would also toll the period for the period of time that a contractor or subcontractor fails to provide certified payroll records pursuant to a request from the Labor Commissioner, a joint labor-management committee, or an approved labor compliance program.*

Existing law authorizes a joint labor-management committee, established pursuant to a specified provision of federal law, to bring an action against any employer who fails to pay prevailing wages as required by state law. The action is required to commence not later than 180 days after the filing of a valid notice of completion in the county where the public work was performed or not later than 180 days after acceptance of the public work, whichever occurs later.

This bill would toll the period for commencing an action ~~for during~~ the period of time ~~required by the director~~ in which a request to determine whether a project is a public work, *including the period of a timely administrative appeal, is pending before the director*, as specified. *This bill would also toll the period for the period of time that a contractor or subcontractor fails to provide certified payroll records pursuant to a request from a joint labor-management committee.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares that the process*
2 *for the Director of Industrial Relations to determine the existence*
3 *of a public work and to decide administrative appeals from those*
4 *determinations has created unacceptable delays and prejudice to*
5 *the enforcement of the public works law, often resulting in the*
6 *expiration of the statute of limitation for the identification and*
7 *collection of wage and penalty assessments. As a result, wage theft*
8 *has occurred because workers are not paid prevailing wage rates*
9 *and the time for assessment has expired. Further, there has been*
10 *an incentive to some developers, contractors, and public bodies*
11 *to engage in expensive and time-consuming litigation in efforts to*
12 *extend the time for determining the existence of a public work.*
13 *This litigation is often a needless expense to the state. In addition,*
14 *public bodies, developers, contractors, and others are entitled to*
15 *a determination of whether a project is a public work as early as*
16 *possible so that the costs of the project and the duties of the parties*
17 *under the law may be known as early as possible. Thus, this act*
18 *is necessary to ensure the actual receipt of proper wages, to reduce*
19 *administrative and litigation costs to the state and others, and to*
20 *provide early guidance to all interested parties.*

21 ~~SECTION 1.~~

22 *SEC. 2. Section 1726 of the Labor Code is amended to read:*

23 1726. (a) The body awarding the contract for public work shall
24 take cognizance of violations of this chapter committed in the
25 course of the execution of the contract, and shall promptly report
26 any suspected violations to the Labor Commissioner.

27 (b) If the awarding body determines as a result of its own
28 investigation that there has been a violation of this chapter and

1 withholds contract payments, the procedures in Section 1771.6
2 shall be followed.

3 (c) A contractor may bring an action in a court of competent
4 jurisdiction to recover from an awarding body the difference
5 between the wages actually paid to an employee and the wages
6 that were required to be paid to an employee under this chapter,
7 any penalties required to be paid under this chapter, and costs and
8 attorney's fees related to this action, if either of the following is
9 true:

10 (1) The awarding body previously affirmatively represented to
11 the contractor in writing, in the call for bids, or otherwise, that the
12 work to be covered by the bid or contract was not a "public work,"
13 as defined in this chapter.

14 (2) The awarding body received actual written notice from the
15 Department of Industrial Relations that the work to be covered by
16 the bid or contract is a "public work," as defined in this chapter,
17 and failed to disclose that information to the contractor before the
18 bid opening or awarding of the contract.

19 ~~If an awarding body~~ *When a political subdivision* believes
20 that a project in which it ~~has a legal interest~~ *is interested* is not a
21 public work, ~~the awarding body~~ *it* shall notify the Director of
22 Industrial Relations, the Labor Commissioner, and any person who
23 has asked for that notice, together with the reason therefor, ~~not~~
24 ~~less than~~ within 30 days of the commencement of any work
25 estimated to last six months or more, and before the
26 commencement of any work if a project is not estimated to exceed
27 six months. *For purposes of this section, a political subdivision*
28 *is interested in a project if it has a proprietary interest, and not*
29 *only a regulatory interest, in the project.* This notice shall be a
30 public record. The director shall create necessary forms and adopt
31 regulations to implement this subdivision.

32 ~~SEC. 2.~~

33 *SEC. 3.* Section 1741 of the Labor Code is amended to read:

34 1741. (a) If the Labor Commissioner or his or her designee
35 determines after an investigation that there has been a violation of
36 this chapter, the Labor Commissioner shall with reasonable
37 promptness issue a civil wage and penalty assessment to the
38 contractor or subcontractor or both. The assessment shall be in
39 writing and shall describe the nature of the violation and the
40 amount of wages, penalties, and forfeitures due and shall include

1 the basis for the assessment. The assessment shall be served within
2 180 days of the date of the determination of a violation. Service
3 of the assessment shall be completed pursuant to Section 1013 of
4 the Code of Civil Procedure by first-class and certified mail to the
5 contractor, subcontractor, and awarding body. The assessment
6 shall advise the contractor and subcontractor of the procedure for
7 obtaining review of the assessment. The Labor Commissioner
8 shall, to the extent practicable, ascertain the identity of any bonding
9 company issuing a bond that secures the payment of wages covered
10 by the assessment and any surety on a bond, and shall serve a copy
11 of the assessment by certified mail to the bonding company or
12 surety at the same time service is made to the contractor,
13 subcontractor, and awarding body. However, no bonding company
14 or surety shall be relieved of its responsibilities because it failed
15 to receive notice from the Labor Commissioner.

16 (b) Interest shall accrue on all due and unpaid wages at the rate
17 described in subdivision (b) of Section 3289 of the Civil Code.
18 The interest shall accrue from the date that the wages were due
19 and payable, as provided in Part 7 (commencing with Section
20 1720) of Division 2, until the wages are paid.

21 (c) (1) The Labor Commissioner shall maintain a public list of
22 the names of each contractor and subcontractor who has been found
23 to have committed a willful violation of Section 1775 or to whom
24 a final order, which is no longer subject to judicial review, has
25 been issued.

26 (2) The list shall include the date of each assessment, the amount
27 of wages and penalties assessed, and the amount collected.

28 (3) The list shall be updated at least quarterly, and the
29 contractor's or subcontractor's name shall remain on that list until
30 the assessment is satisfied, or for a period of three years beginning
31 from the date of the issuance of the assessment, whichever is later.

32 (d) The period for service of assessments shall be tolled for the
33 period of time required by the Director of Industrial Relations to
34 determine whether a project is a public work, including a
35 determination on administrative appeal, if applicable, pursuant to
36 subdivisions (b) and (c) of Section 1773.5. *The period for service*
37 *of assessments shall also be tolled for the period of time that a*
38 *contractor or subcontractor fails to provide in a timely manner*
39 *certified payroll records pursuant to a request from the Labor*
40 *Commissioner or a joint labor-management committee under*

1 *Section 1776, or an approved labor compliance program under*
2 *Section 1771.5 or 1771.7.*

3 ~~SEC. 3.~~

4 *SEC. 4.* Section 1771.2 of the Labor Code is amended to read:

5 1771.2. (a) A joint labor-management committee established
6 pursuant to the federal Labor Management Cooperation Act of
7 1978 (Section 175a of Title 29 of the United States Code) may
8 bring an action in any court of competent jurisdiction against an
9 employer that fails to pay the prevailing wage to its employees,
10 as required by this article. This action shall be commenced not
11 later than 180 days after the filing of a valid notice of completion
12 in the office of the county recorder in each county in which the
13 public work or some part thereof was performed, or not later than
14 180 days after acceptance of the public work, whichever last
15 occurs.

16 (b) The period for commencing an action shall be tolled ~~for~~
17 *during the period of time required by in which a request to*
18 *determine whether a specific project is a public work is pending*
19 *before the Director of Industrial Relations to determine whether*
20 *a project is a public work, including the period of a determination*
21 *on a timely administrative appeal to the director from that*
22 *determination by an interested party, if applicable, pursuant to*
23 *subdivisions (b) and (c) of Section 1773.5. applicable. The period*
24 *for commencing an action shall also be tolled for the period of*
25 *time that a contractor or subcontractor fails to provide in a timely*
26 *manner certified payroll records pursuant to a request from a joint*
27 *labor-management committee under Section 1776.*

28 ~~SEC. 4.~~

29 *SEC. 5.* Section 1773.5 of the Labor Code is amended to read:

30 1773.5. (a) The Director of Industrial Relations may establish
31 rules and regulations for the purpose of carrying out this chapter,
32 including, but not limited to, the responsibilities and duties of
33 awarding bodies under this chapter.

34 (b) ~~Any party may request from the director a determination of~~
35 *The director shall determine whether a specific project is a public*
36 *work, and the director shall make that determination work within*
37 *60 days of the receipt of that a request for a determination. If the*
38 *director deems that the complexity of the request requires*
39 *additional time to make that determination, the director may have*
40 *up to an additional 60 days if he or she certifies in writing to the*

1 requestor, and any *interested* awarding body ~~with a legal interest~~
2 ~~in the project~~, the reasons for the extension. *If the requestor is not*
3 *an awarding body, the requester shall serve a copy of the request*
4 *upon the awarding body, in which event the awarding body shall,*
5 *within 15 days of its receipt, advise the director of its position*
6 *regarding the request.*

7 (c) ~~A party may make~~ *If* an administrative appeal of the
8 director's determination *is made, it shall be made* within 30 days
9 of the date of the determination. The director shall issue a
10 determination on the administrative appeal within 30 days after
11 receipt of the appeal. The director may have *up to* an additional
12 60 days if he or she certifies in writing to the party requesting the
13 appeal the reasons for the extension.

14 (d) The director shall have quasi-legislative authority to
15 determine coverage of projects under prevailing wage laws. A
16 final determination on any appeal is subject to judicial review
17 pursuant to Section 1085 of the Code of Civil Procedure.